

amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of Money Cost Principal. If the contractor does not propose this cost, a provision must be inserted in the contract that facilities capital cost of money is not an allowable cost.

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.

(d) Certification by offeror—To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.604 resulting in an unfair advantage to an offeror, the contracting officer shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

UNSOLICITED PROPOSAL

Certification by Offeror

This is to certify, to the best of my knowledge and belief, that:

(a) This proposal has not been prepared under Government supervision.

(b) The methods and approaches stated in the proposal were developed by this offeror.

(c) Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.604.

(d) No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.606 Agency procedures.

(a) The HCA is responsible for establishing procedures to comply with FAR 15.606(a).

(b) The HCA or his/her designee shall be the point of contract for coordinating the receipt and handling of unsolicited proposals.

315.606-1 Receipt and initial review.

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the grounds that they lack scientific merit.

315.609 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.609(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with FAR 15.604(a)(7):

The Government will attempt to comply with the "Use and Disclosure of Data" legend.

However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-Reimbursement Contracts

Sec.

316.307 Contract clauses.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.

316.603-3 Limitations.

316.603-70 Information to be furnished when requesting authority to issue a letter contract.

Health and Human Services

316.603-71

316.603-71 Approval for modifications to letter contracts.

Subpart 316.7—Agreements

316.770 Unauthorized types of agreements.

316.770-1 Letter of intent.

316.770-2 Memorandums of understanding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4243, Jan. 17, 2001, unless otherwise noted.

Subpart 316.3—Cost-Reimbursement Contracts

316.307 Contract clauses.

(a) If the contract is with a hospital (profit or nonprofit) for research and development, modify the “Allowable Cost and Payment” clause at FAR 52.216-7 by deleting from paragraph (a) the words “Subpart 31.2 of the Federal Acquisition Regulation (FAR)” and substituting “45 CFR Part 74 Appendix E.”

(j) The contracting officer shall insert the clause at 352.216-72, Additional Cost Principles, in all solicitations and resultant cost-reimbursement contracts.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.

316.603-3 Limitations.

An official one level above the contracting officer shall execute the prescribed written statement.

316.603-70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(j) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included which would indicate the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of a proposed letter contract. If more than 180 days, complete justification must be given.

(l) Statement of any substantive matters that need to be resolved.

316.603-71 Approval for modifications to letter contracts.

All letter contract modifications (amendments) must be approved one level above the contracting officer. Request for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and indicate approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased beyond 180 days, if applicable.

316.770

(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 316.603–70(j) must be included.

Subpart 316.7—Agreements

316.770 Unauthorized types of agreements.

316.770–1 Letters of intent.

A letter of intent is an informal unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities. Letters of intent are often solicited by prospective contractors or may be originated by Government personnel. Letters of intent are not authorized by the FAR and are prohibited for use by Department personnel.

316.770–2 Memorandums of understanding.

A “memorandum of understanding” is an unauthorized agreement, usually drafted during the course of negotiations, to modify mandatory FAR and HHSAR provisions in such a manner as to make them more acceptable to a prospective contractor. It may be used to bind the contracting officer in attempting to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document. Use of memorandums of understanding is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested.

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.2—Options

Sec.
317.201 Definition.

48 CFR Ch. 3 (10–1–05 Edition)

317.204 Contracts.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act.

317.7100 Scope of subpart.
317.7101 Applicable regulations.
317.7102 Acquisition of training.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4244, Jan. 17, 2001, unless otherwise noted.

Subpart 317.2—Options

317.201 Definitions.

An option must:

- (a) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;
- (b) Establish a price or specify a method of calculation which will make the price certain;
- (c) Be agreed to and included in the initial contract award; and
- (d) Permit the Government the right to exercise the option unilaterally.

317.204 Contracts.

The total of the basic and option periods shall not exceed 10 years in the case of services and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

[70 FR 11583, Mar. 9, 2005]

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training under the Government Employees Training Act (GETA), 5 U.S.C. Chapter 41.

317.7101 Applicable regulations.

Basic policy, standards, and delegations of authority to approve training